

Santa Barbara County Special Education Local Plan Area

Administrative Regulation: Uniform Complaint Procedures

(AR 2007)

Complaints Subject to UCP

The Santa Barbara County SELPA does not provide the same range of programs and services that other local educational agencies (“LEAs”) provide. Therefore, to the extent that the following complaints are applicable to SELPA programs, services, and activities, the SELPA’s Uniform Complaint Procedures (“UCP”) shall be used to investigate and resolve complaints regarding the following:

1. Accommodations for pregnant and parenting students.
2. Consolidated categorical aid programs.
3. Discrimination, harassment, intimidation, or bullying in SELPA programs and activities, including in those programs or activities funded directly by or that receive or benefit from any state financial assistance, based on one, or a combination of two or more, protected characteristics, which include, but may not be limited to, a person's actual or perceived race or ethnicity; ancestry; color; ethnic group identification; nationality; national origin; immigration status; sex; sexual orientation; sex stereotypes; gender; gender identity; gender expression; religion; disability; medical condition; genetic information; pregnancy, false pregnancy, childbirth, termination of pregnancy, or related conditions or recovery; and parental, marital, and family status; any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55; or based on the person's association with a person or group with one or more of these actual or perceived characteristics.

However, the UCP shall not be used to investigate and resolve employment discrimination complaints.

A complaint alleging such unlawful discrimination may, in addition to or in lieu of being filed with the SELPA, be directly filed with the Superintendent of Public Instruction (“SPI”).

4. Reasonable accommodations to a lactating student.
5. Any complaint alleging retaliation against a complainant or other participant in the complaint process or anyone who has acted to uncover or report a violation subject to this policy.
6. Any other state or federal educational program the SPI or designee deems appropriate.

Copies of UCP Policy and Administrative Regulation

Copies of this UCS policy and administrative regulation are available free of charge upon request to the SELPA Executive Director.

Timeline for Filing UCP

A UCP complaint, except a complaint alleging unlawful discrimination, harassment, intimidation, or bullying, must be filed no later than one year from the date the alleged violation occurred.

A UCP complaint alleging unlawful discrimination, harassment, intimidation, or bullying must be filed no later than six months from the date of the alleged conduct or the date the complainant first obtained knowledge of the facts of the alleged conduct.

The time for filing may be extended for up to 90 days by the SELPA Executive Director or designee for good cause upon written request by the complainant setting forth the reasons for the extension.

Alternative Dispute Resolution

The SELPA JPA Board recognizes that alternative dispute resolution (“ADR”) can, depending on the nature of the allegations, offer a process for resolving a complaint in a manner that is acceptable to all parties. An ADR process may be offered to resolve UCP complaints. However, mediation shall not be offered or used to resolve any complaint involving sexual assault or where there is a reasonable risk that a party to the mediation would feel compelled to participate. The SELPA Executive Director or designee shall ensure that the use of ADR is consistent with state and federal laws and regulations.

Retaliation and Confidentiality

The SELPA shall protect all complainants from retaliation. In investigating complaints, the confidentiality of the parties involved shall be protected as required by law. For any complaint alleging retaliation or unlawful discrimination, the SELPA Executive Director or designee shall keep the identity of the complainant, and/or the subject of the complaint if different from the complainant, confidential when appropriate and as long as the integrity of the complaint process is maintained.

Training

The SELPA Executive Director or designee shall provide training to SELPA staff to ensure awareness and knowledge of current law and requirements related to UCP, including the steps and timelines specified in this policy and the accompanying administrative regulation.

Records

The SELPA Executive Director or designee shall maintain a record of each complaint and subsequent related actions, including steps taken during the investigation and all information required for compliance with Title 5 of the California Code of Regulations sections 4631 and 4633.

Non-UCP Complaints

When an allegation that is not subject to UCP is included in a UCP complaint, the SELPA shall refer the non-UCP allegation to the appropriate staff or agency and shall investigate and, if appropriate, resolve the UCP-related allegation(s) through the SELPA's UCP.

The following complaints shall not be subject to the SELPA's UCP but shall be investigated and resolved by the specified agency or through an alternative process:

1. Any complaint alleging child abuse or neglect shall be referred to the County Department of Social Services Protective Services Division or the appropriate law enforcement agency.
2. Any complaint alleging health and safety violations by a child development program shall, for licensed facilities, be referred to Department of Social Services.

3. Any complaint alleging that a student, while in an education program or activity, was subjected to sexual harassment, as defined in Title 34 of the Code of Federal Regulations section 106.30. Such a complaint shall be addressed through the federal Title IX complaint procedures.
4. Any complaint alleging employment discrimination or harassment shall be investigated and resolved by the SELPA in accordance with the appropriate procedures, including the right to file the complaint with the California Civil Rights Department.
5. Any complaint alleging a violation of a state or federal law or regulation related to special education, a settlement agreement related to the provision of a free appropriate public education (FAPE), failure or refusal to implement a due process hearing order to which the SELPA is subject, or a physical safety concern that interferes with the SELPA's provision of FAPE shall be submitted to the California Department of Education ("CDE").

Compliance Officer

The SELPA designates the individual identified below as responsible for receiving, coordinating, and investigating UCP complaints and for complying with state and federal laws. The individual is responsible for handling UCP complaints.

Dr. Stacey McCrath-Smith
SELPA Executive Director
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The compliance officer who receives a complaint may assign a designee to investigate and resolve the complaint. The compliance officer shall promptly notify the complainant and respondent if a designee is assigned to the complaint.

In no instance shall an investigator be assigned to a complaint in which the investigator has a bias or conflict of interest that would prohibit the fair investigation or resolution of the complaint. Any complaint against an investigator or that raises a concern about the compliance officer or designee's ability to investigate the complaint fairly and without bias shall be filed with the SELPA Executive Director who shall determine how the complaint will be investigated.

The SELPA Executive Director or designee shall ensure that employees assigned to investigate and resolve complaints receive training and are knowledgeable about the laws and programs at issue in the complaints to which they are assigned. Training provided to such employees shall cover current state and federal laws and regulations governing the program; applicable processes for investigating and resolving complaints, including those alleging unlawful discrimination, harassment, intimidation, or bullying; applicable standards for reaching decisions on complaints; and appropriate corrective measures. Assigned employees may have access to legal counsel as determined by the SELPA Executive Director or designee.

The compliance officer or designee or, if necessary, an appropriate administrator shall determine whether interim measures are necessary during an investigation and while the result is pending. The interim measures shall remain in place until the compliance officer or designed or appropriate administrator determines that they are no longer necessary or until the compliance officer or designee issues its final written decision, whichever occurs first.

Notifications

The SELPA's UCP policy and administrative regulation shall be posted in its office, including in the staff lounge.

In addition, the SELPA Executive Director or designee shall annually provide written notification of the SELPA's UCP by posting this policy and administrative regulation it on the SELPA's website. The annual notification, complete contact information of the compliance officer, and information related to Title IX as required pursuant to Education Code section 221.61 and Title 34 of the Code of Federal Regulations section 106.8 shall be posted on SELPA website.

The SELPA Executive Director or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, have access to the relevant information provided in the SELPA's UCP policy and administrative regulation.

Filing of Complaints

The complaint shall be presented to the compliance officer who shall maintain a log of complaints received, providing each with a code number and a date stamp.

All complaints shall be filed in writing and signed by the complainant. If a complainant is unable to put a complaint in writing due to conditions such as a disability or illiteracy, SELPA staff shall assist in the filing of the complaint.

Complaints shall also be filed in accordance with the following rules, as applicable:

1. A complaint alleging SELPA violation of applicable state or federal law or regulations governing the programs specified in this administrative regulation may be filed by any individual, public agency, or organization.
2. A complaint alleging unlawful discrimination, harassment, intimidation, or bullying may be filed only by a person who alleges having personally suffered unlawful discrimination, a person who believes that any specific class of individuals has been subjected to unlawful discrimination, or a duly authorized representative who alleges that an individual student has been subjected to discrimination, harassment, intimidation, or bullying.
3. When a complaint alleging unlawful discrimination, harassment, intimidation, or bullying is filed anonymously, the compliance officer shall pursue an investigation or other response as appropriate, depending on the specificity and reliability of the information provided and the seriousness of the allegation.
4. When a complainant of unlawful discrimination, harassment, intimidation, or bullying or the alleged victim, when not the complainant, requests confidentiality, the compliance officer shall inform the complainant or victim that the request may limit the SELPA's ability to investigate the conduct or take other necessary action.

When honoring a request for confidentiality, the SELPA shall nevertheless take all reasonable steps to investigate and resolve/respond to the complaint consistent with the request.

Investigation of Complaint

The compliance officer or designee shall begin an investigation into the complaint within 10 business days of receiving the complaint.

Within one business day of initiating the investigation, the compliance officer or designee shall provide the complainant and/or the complainant's representative with the opportunity to present the information contained in the complaint to the compliance officer or designee and shall notify the complainant and/or representative of the opportunity to present the compliance officer or designee with any evidence, or information leading to evidence, to support the allegations in the complaint. Such evidence or information may be presented at any time during the investigation.

In conducting the investigation, the compliance officer or designee shall collect all available documents and review all available records, notes, or statements related to the complaint, including any additional evidence or information received from the parties during the course of the investigation. The compliance officer or designee shall individually interview all available witnesses with information pertinent to the complaint and may visit any reasonably accessible location where the relevant actions are alleged to have taken place. At appropriate intervals, the compliance officer or designee shall inform the parties of the status of the investigation.

To investigate a complaint alleging retaliation or unlawful discrimination, harassment, intimidation, or bullying, the compliance officer or designee shall interview the alleged victim(s), any alleged offender(s), and other relevant witnesses privately, separately, and in a confidential manner. As necessary, additional staff or legal counsel may conduct or support the investigation.

A complainant's refusal to provide the SELPA's investigator with documents or other evidence related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of the investigation may result in the dismissal of the complaint. Refusal by the SELPA to provide the investigator with access to records and/or information related to the allegations in the complaint, failure or refusal to cooperate in the investigation, or any other obstruction of the investigation may result in a finding based on evidence collected that a violation has occurred and in the imposition of a remedy in favor of the complainant.

Timeline for Investigation Report

Within 30 calendar days of receiving the complaint, the compliance officer or designee shall prepare and send to the complainant a written report, as described in the section "Investigation Report" below. If the complainant is dissatisfied with the compliance officer or designee's decision, the complainant may, within five business days, file an appeal of the investigation report with the SELPA JPA Board.

If the SELPA JPA Board decides not to hear the appeal, the compliance officer or designee's decision shall be final.

If the SELPA JPA Board hears appeal, the compliance officer shall send the SELPA JPA Board's decision to the complainant within 60 calendar days of the SELPA's initial receipt of the appeal or within the time period that has been specified in a written agreement with the complainant.

Investigation Report

For all complaints, the compliance officer or designee's investigation report shall include:

1. The findings of fact based on the evidence gathered.
2. A conclusion providing a clear determination for each allegation as to whether the SELPA is in compliance with the relevant law.
3. Corrective action(s) whenever the compliance officer or designee finds merit in the complaint, including, when required by law, an appropriate remedy.

4. Notice of the complainant's right to appeal the compliance officer or designee's or, if appealed to the SELPA JPA Board, the SELPA JPA Board's decision to CDE, except when the SELPA has used the UCP to address a complaint not specified in Title 5 of the California Code of Regulations section 4610.
5. Procedures to be followed for initiating an appeal to CDE.
6. The investigation report may also include follow-up procedures to prevent recurrence or retaliation and for reporting any subsequent problems.

In consultation with SELPA legal counsel, information about the relevant part of an investigation report may be communicated to a victim who is not the complainant and to other parties who may be involved in implementing the investigation report or are affected by the complaint.

If the complaint involves a limited-English-proficient ("LEP") student or parent/guardian, then the investigation report, if requested by the complainant, shall be written in English and the primary language in which the complaint was filed.

For complaints alleging unlawful discrimination, harassment, intimidation, or bullying based on state law, the investigation report shall also include a notice to the complainant that:

1. The complainant may pursue available civil law remedies outside of the SELPA's complaint procedures, including, but not limited to, injunctions, restraining orders or other remedies or orders, 60 calendar days after the filing of an appeal with CDE.
2. The 60-day moratorium does not apply to complaints seeking injunctive relief in state courts or to discrimination complaints based on federal law.
3. Complaints alleging discrimination based on race, color, national origin, sex, gender, disability, or age may also be filed with the U.S. Department of Education's Office for Civil Rights at www.ed.gov/ocr within 180 days of the alleged discrimination.

Appeals to the California Department of Education

Any complainant who is dissatisfied with the SELPA's investigation report on a complaint, or the associated decision of the appeal to the SELPA JPA Board, regarding any specified federal or state educational program subject to UCP may file an appeal in writing with CDE within 30 calendar days of receiving the SELPA's investigation report or SELPA JPA Board's appeal decision—whichever is later in time.

The appeal shall be sent to CDE with a copy of the original locally filed complaint and a copy of the SELPA's investigation report and, if an appeal was filed, the decision of the SELPA JPA Board, for that complaint. The complainant shall specify and explain the basis for the appeal, including at least one of the following:

1. The compliance officer or designee failed to follow its complaint procedures.
2. Relative to the allegations of the complaint, the compliance officer or designee's investigation report lacks material findings of fact necessary to reach a conclusion of law.
3. The material findings of fact in the compliance officer or designee's investigation report are not supported by substantial evidence.

4. The legal conclusion in the compliance officer or designee's investigation report is inconsistent with the law.
5. The compliance officer or designee's corrective actions fail to provide a proper remedy.
6. Any of the above five related to the JPA Board's decision if an appeal was filed to the SELPA JPA Board.

Upon notification by CDE that the compliance officer or designee's investigation report or SELPA JPA Board's decision has been appealed, the SELPA Executive Director or designee shall forward the following documents to CDE within 10 days of the date of notification:

1. A copy of the original complaint.
2. A copy of the compliance officer or designee's investigation report.
3. A copy of the investigation file including, but not limited to, all notes, interviews, and documents submitted by the parties and gathered by the investigator.
4. A report of any action taken to resolve the complaint.
5. A copy of the SELPA's UCP policy and administrative regulation.
6. Other relevant information requested by CDE.

If notified by CDE that the compliance officer or designee's investigation report failed to address allegation(s) raised by the complaint, the SELPA shall, within 20 days of the notification, provide CDE and the appellant with an amended investigation report that addresses the allegation(s) that were not addressed in the original investigation report. The amended report shall also inform the appellant of the right to separately appeal the amended report with respect to the allegation(s) that were not addressed in the original report.